

**FILED**

**FEB 21 2013**

**Board of Vocational Nursing  
and Psychiatric Technicians**

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**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2010-3719

**MICHAEL A. COLINO**  
17220 Grevillea Ave, Apt. A  
Lawndale, CA 90260

**ACCUSATION**

Vocational Nurse License No. VN 235718

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

2. On or about July 14, 2008, the Board issued Vocational Nurse License No. VN 235718 to Michael A. Colino (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

## STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides, in pertinent part, that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

5. Section 490 provides, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 492 provides:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for

1 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
2 record pertaining to an arrest.

3 "This section shall not be construed to apply to any drug diversion program operated by any  
4 agency established under Division 2 (commencing with Section 500) of this code, or any  
5 initiative act referred to in that division."

6 7. Section 2875 provides, in pertinent part, that the Board may discipline the holder of a  
7 vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of  
8 the Vocational Nursing Practice Act.

9 8. Section 2878 provides, in pertinent part:

10 "The Board may suspend or revoke a license issued under this chapter [the Vocational  
11 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

12 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

13 . . . .

14 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
15 violating of, or conspiring to violate any provision or term of this chapter.

16 . . . .

17 "(f) Conviction of a crime substantially related to the qualifications, functions, and duties  
18 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive  
19 evidence of the conviction."

20 9. Section 2878.5 provides, in pertinent part:

21 "In addition to other acts constituting unprofessional conduct within the meaning of this  
22 chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed  
23 under this chapter to do any of the following:

24 . . . .

25 "(b) Use any controlled substance as defined in Division 10 of the Health and Safety  
26 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in  
27 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the  
28

1 extent that the use impairs his or her ability to conduct with safety to the public the practice  
2 authorized by his or her license.

3 "(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous  
4 drug, or the prescription, consumption, or self-administration of any of the substances described  
5 in subdivisions (a) and (b) of this section, in which event the record of the conviction is  
6 conclusive evidence thereof."

### 7 **REGULATORY PROVISIONS**

8 10. California Code of Regulations, title 16, section 2521, provides:

9 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5  
10 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be  
11 considered to be substantially related to the qualifications, functions or duties of a licensed  
12 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed  
13 vocational nurse to perform the functions authorized by his license in a manner consistent with  
14 the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those  
15 involving the following:

16 . . . .

17 "(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
18 violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the  
19 Business and Professions Code."

### 20 **COST RECOVERY**

21 11. Section 125.3 provides, in pertinent part, that the Board may request the  
22 administrative law judge to direct a licentiate found to have committed a violation or violations of  
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
24 enforcement of the case.

### 25 **FIRST CAUSE FOR DISCIPLINE**

#### 26 **(Convictions of Substantially-Related Crimes)**

27 12. Respondent is subject to disciplinary action under sections 490, and 2878, subdivision  
28 (f), in conjunction with California Code of Regulations, title 16, section 2521, in that Respondent

1 was convicted of crimes that are substantially related to the qualifications, functions, and duties of  
2 a vocational nurse as follows:

3 a. On or about August 18, 2011, after pleading *nolo contendere*, Respondent was  
4 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
5 [driving while having 0.08% and more, by weight, of alcohol in his blood], in the criminal  
6 proceeding entitled *The People of the State of California v. Michael Angel Colino* (Super. Ct. Los  
7 Angeles County, 2011, No. 1SY03235). The court sentenced Respondent to serve 20 days in jail;  
8 placed him on probation for a period of 4 years; ordered him to enroll and complete an 18 month  
9 licensed second-offender alcohol and drug education and counseling program; and fined him.  
10 The circumstances surrounding the conviction are that on or about March 02, 2011, a Gardena  
11 Police Officer, while on patrol duty, observed Respondent drive on the sidewalk in a residential  
12 area, in violation of Vehicle Code section 21663. The officer conducted a routine traffic stop, and  
13 identified the Respondent as the driver. During the investigation, the officer smelled a strong  
14 odor of an alcoholic beverage emitting from Respondent's breath, and observed Respondent's  
15 eyes to be bloodshot and watery. Respondent admitted to the officer that he had, "One Heinekein  
16 at Starz." Respondent agreed to a series of field sobriety tests which he failed to complete  
17 satisfactorily. Respondent subsequently agreed to two blood tests with results of .145% BAC and  
18 .155% BAC.

19 b. On or about May 27, 2009, after pleading *nolo contendere*, Respondent was  
20 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
21 [driving while having 0.08% and more, by weight, of alcohol in his blood], in the criminal  
22 proceeding entitled *The People of the State of California v. Michael Angel Colino* (Super. Ct. Los  
23 Angeles County, 2009, No. LAV9VY0093701). The court placed Respondent on probation for a  
24 period of 36 months, and fined him. The circumstances surrounding the conviction are that on or  
25 about February 15, 2009, Respondent did unlawfully drive a vehicle while have a 0.08 percent or  
26 more, by weight, of alcohol in his blood, violating Vehicle Code section 23152, subdivision (b).

27 c. On or about October 9, 2008, after pleading *nolo contendere*, Respondent was  
28 convicted of one misdemeanor count of violating Los Angeles Municipal Code, section 41.47.2

1 [urinating or defecating in public], in the criminal proceeding entitled *The People of the State of*  
2 *California v. Michael Angel Colino* (Super. Ct. Los Angeles County, 2008, No.  
3 LAV8PY0554101). The Court ordered Respondent to pay a fine of \$238.00. The circumstances  
4 surrounding the conviction are that on or about August 8, 2008, Respondent did unlawfully  
5 urinate or defecate in a public place, in violation of Los Angeles Municipal Code section 41.47.2.

6 d. On or about July 05, 2002, after pleading *nolo contendere*, Respondent was convicted  
7 of one misdemeanor count of violating Penal Code section 653m [annoying phone calls: obscene  
8 threats], in the criminal proceeding entitled *The People of the State of California v. Michael Angel*  
9 *Colino* (Super. Ct. Los Angeles County, 2002, No. 2PN02284). The court sentenced Respondent  
10 to serve 1 day in jail, placed Respondent on probation for a period of 36 months, and fined him.  
11 The circumstances surrounding the conviction are that on or about April 29, 2002, Respondent  
12 left annoying telephone calls on the victim's cell phone while victim was at the West Valley  
13 Police Department making an annoying telephone calls report against Respondent. The officers  
14 at the station played back the victim's cellular phone messages left by Respondent calling the  
15 victim a "b..." and a "w..." While the victim was at the station making the report the victim's  
16 phone rang on 7 to 8 occasions within a 30 minute span. The Respondent was arrested in front of  
17 the station while following the victim for violating Penal Code section 653m [annoying telephone  
18 calls.]

## 19 SECOND CAUSE FOR DISCIPLINE

### 20 (Convictions of Drug and/or Alcohol Related Crimes)

21 13. Respondent is subject to disciplinary action under sections 2878, subdivision (a), and  
22 2878.5, subdivision (c), in conjunction with California Code of Regulations, title, 16, section  
23 2521, subdivision (f), in that Respondent was convicted of crimes involving drugs and / or  
24 alcoholic beverages. Complainant refers to, and by this reference incorporates, the allegations set  
25 forth above in paragraph 12, subparagraphs (a) and (b), inclusive, as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Drugs and/or Alcohol)**

3 14. Respondent is subject to disciplinary action under sections 2878, subdivisions (b) and  
4 (c), on the grounds of unprofessional conduct, in that Respondent used alcoholic beverages and /  
5 or drugs to an extent or in a manner dangerous or injurious to himself, any other person, or the  
6 public as follows:

7 a. On or about February 07, 2003, San Fernando Police Department Officers were  
8 dispatched to investigate a grand theft auto in progress. Upon arrival at the scene, the officers  
9 identified Respondent as one of the suspects who was standing outside of the vehicle and began  
10 walking to the rear of the vehicle when he saw the police officers. The officers conducted a body  
11 search of Respondent and recovered a plastic bag from Respondent's right front pants pocket  
12 containing marijuana. The officers observed Respondent to have a dazed expression, dilated  
13 pupils, and an elevated pulse rate indicating he was under the influence of a controlled substance.  
14 The Respondent agreed to a Rhomberg test with an estimated passage of 30 seconds in 11  
15 seconds. The Respondent was subsequently arrested for violating Health and Safety Code section  
16 11550, subdivision (a).

17 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
18 paragraph 12, subparagraphs (a) and (b), inclusive, as though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct / Violate Act)**

21 15. Respondent is subject to disciplinary action under sections 2878, subdivision (d), and  
22 2878.5, on the grounds of unprofessional conduct, in that Respondent committed acts involving  
23 unprofessional conduct, violating the Vocational Nursing Practice Act. Complainant refers to,  
24 and by this reference incorporates, the allegations set forth above in paragraphs 12 through 14,  
25 inclusive, as though set forth fully.

26 **ADDITIONAL DISCIPLINARY CONSIDERATIONS**

27 16. To determine the degree of discipline, if any to be imposed on Respondent,  
28 Complainant alleges the following:

1 a. On or about June 10, 2010, the Board issued to Respondent Citation Order No. 10-  
2 0071-L for violating Business and Professions Code section 2878, subdivisions (a) and (f), and  
3 section 2878.5, subdivision (b). The Board ordered Respondent to pay an administrative fine in  
4 the amount of \$500.00. Future substantiated reports that he engaged in similar behavior or  
5 otherwise violated the law or regulations governing the practice as a vocational nurse may result  
6 in formal disciplinary action against his license, including revocation.

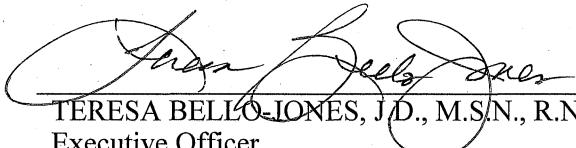
7 b. On or about June 26, 2008, Respondent received a "Notice of Warning" from the  
8 Board stating that Respondent should behave in an honest and ethical manner. Further substantial  
9 reports that he violated the law or regulations governing the practice as a vocational nurse, may  
10 result in disciplinary action against his license.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the issue a decision:

- 14 1. Revoking or suspending Vocational Nurse License No. VN 235718, issued to  
15 Michael A. Colino;  
16 2. Ordering Michael A. Colino to pay the Board the reasonable costs of the investigation  
17 and enforcement of this case, pursuant to section 125.3; and  
18 3. Taking such other and further action as deemed necessary and proper.

19  
20 DATED: **FEB 21 2013**

  
21 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
22 Executive Officer  
23 Board of Vocational Nursing and Psychiatric Technicians  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant

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